

The First Constitutional Convention,
and Its Effect on the History
of Ohio.

AN ADDRESS

BY

DANIEL J. RYAN

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On the Occasion of the Centennial of the Adoption of the
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In order to appreciate intelligently the event which we celebrate here today it is necessary that we have a clear conception of the principal actors concerned therein, and of the times and surroundings of a century ago in the Scioto Valley. The first constitutional convention, from an intellectual standpoint, is the greatest, as well as the most picturesque episode in the history of our State, and the events which led up to it read like a romance. The conversion of a wilderness into a garden; the invasion of the Virginians; the overthrow of the great Arthur St. Clair; the struggle for statehood; the victory of the people over the aristocracy; the framing of the constitution for a people without their consultation or consent, are all events that form a background for a picture that has no parallel in American history. And all these scenes were enacted in a theatre of intellect; the only weapons were tongues and pens, but they were directed by men who for brains and bravery are worthy of every tribute of admiration and respect that the people of Ohio can today bestow upon them.

Six years prior to 1802 there came into the Scioto Valley a young Virginian named Nathaniel Massie. He had served in the Revolutionary War from his native State at the age of seventeen, and at nineteen started to Kentucky to pursue his vocation of surveying the public lands and placing land warrants for soldiers of the

Revolution. He founded Manchester in Adams county, and in 1796 penetrated the Scioto Valley, which was then a beautiful but savagely wild territory. He located in the region about us today and laid out Chillicothe. It is easily to understand how he was attracted to this glorious land, which, then, as now, bore all the evidence of the richness of nature.

One of his companions in his tours of surveying and exploration was John McDonald, afterwards of Poplar Ridge in this (Ross) county, and sixty-two years ago he wrote a description of the land about Chillicothe as he saw it with Massie in 1796. His little volume—"McDonald's Sketches"—is now exceedingly rare and on that account I take the liberty to repeat in his plain style what he wrote. His description of the surroundings of the site selected by Massie for his town, and the condition of the same territory today shows a wondrous transformation from a land of savagery to the garden spot of a commonwealth of the highest civilization. Here is his picture of the Scioto Valley in the spring of 1796: "About four or five miles above the mouth of Paint Creek, the river (Scioto) suddenly makes a bend, and runs a short distance east, thence southeast to the mouth of Paint Creek. That stream, the largest tributary of the Scioto, for four or five miles above its mouth, runs almost parallel with the Scioto. Between these two streams there is a large and beautiful bottom, four or five miles in length, and varying from one to two miles in breadth, and contains within the space upwards of three thousand acres. This bottom (as also the bottoms of the Scioto and Paint Creek generally), is very fertile; the loam of alluvial formation being from three to ten feet in depth. These bottoms, when first settled, were generally covered by a heavy growth of timber, such as

black walnut, sugar tree, cherry, buckeye, hackberry and other trees which denote a rich soil. A portion of them, however, were found destitute of timber, and formed beautiful prairies, clothed with blue grass and blue sedgegrass, which grew to the height of from four to eight feet, and furnished a bountiful supply of pasture in summer and hay in winter, for the live stock of the settlers. The outer edges of these prairies were beautifully fringed around with the plum tree, the red and black haw, the mulberry and crab apple. In the month of May, when those nurseries of nature's God were in full bloom, the sight was completely gratified, while the fragrant and delicious perfume, which filled the surrounding atmosphere, was sufficient to fill and lull the soul with ecstasies of pleasure. The western boundary of this valley, between the two streams, is a hill two or three hundred feet in height. Its base to the south is closely washed by Paint Creek, and where this stream first enters the valley, it terminates in an abrupt point, and then extends up the valley of the Scioto, in a north-west and north course, for many miles, and forms the western boundary of the bottoms along that stream. From the point where the hill abruptly terminates at Paint Creek, running north-northeast at the distance of about one mile across the valley, you reach the bank of the Scioto, at the sudden bend it makes to the east. The valley between this bend of the Scioto and Paint Creek, immediately below the point of the hill, was selected as a site for the town. This part of the valley was chosen, as it consisted of high and dry land, not subject to the floods of the river, which frequently inundated the valley towards the mouth of Paint Creek."

It was amid these natural surroundings that Massie selected the site that was to be the starting point of a great, powerful, wealthy and patriotic State.

The territory of the Scioto Valley had for centuries been the selected living place of divers races of men. In the very dawn of human knowledge it was populated by the mysterious race of mound-builders and was the seat of their cities, camping places, fortifications and altars. Attracted, doubtless, by the magnificent soil, beautiful scenery and natural resources, both of the animal and vegetable kingdom, they filled this valley in great numbers until driven away or destroyed by a succeeding race. After them came the Shawanese, famed for their bravery and numbers, and occupied for perhaps centuries the land along the Scioto River in their populous towns. They, too, lived in this elysium of natural bliss, receiving from bounteous nature all that forest and chase could give. The very beauty and richness of the land made them guard it with such jealous spirit, that when Massie first entered it, it was a great and expansive territory of danger and death to the white man.

Chillicothe, in the very heart of the Virginia Military District, at once attracted immigration from Virginia. It was in the midst of a great domain reserved by that State for the use and settlement of her loyal sons that served in the war for independence. The influx of settlers commenced as soon as the town was laid out and even before the winter of 1796 it had stores and taverns and shops for mechanics. The influence of civilized life soon began to unfold and within a few years a substantial town was in full operation, with a population of one thousand.

In the spring of 1798 there came to Chillicothe from Berkeley county, Virginia, one whose life and actions influenced the history of Ohio in a greater degree than any man in its history. This was Edward Tiffin. He

played such an important part in subsequent events, including the first constitutional convention, that we may well pause in our labors today to view a full length portrait of his remarkable career. It will help us to understand his power and the wonderful work he accomplished. He appeared upon the scene of action in the Northwest Territory in its creative period, when the work of moulding the destinies of a future commonwealth was committed to the care of very few men. Head and shoulders above them all stood Edward Tiffin. His subsequent official life displayed a greater general average of statesmanship than any of his cotemporaries. He met successfully all the opportunities and responsibilities of his life, which is the best indication of ability. His work in creating, advancing and developing Ohio has not been equalled by any man in its history. His boyhood was spent in the city of Carlisle, England, where he was born June 19, 1766. He emigrated to this country when eighteen, and after an excellent medical education obtained in the University of Pennsylvania, settled in Berkeley county, Virginia. There amid the scenes and lives of the early Virginians he spent several years as a quiet and successful physician. When he came to Chillicothe he was still a physician, practicing with marked success financially and professionally. In the sparsely settled Scioto Valley his labors carried him over many miles of travel, and he formed the friendships that explains much of his popularity in after years. He had decided views on politics; the principles of Jefferson were adopted by him early in his Virginia life, and his anti-Federal proclivities were well known in his new home.

In 1799 the people of the Northwest Territory assumed the legislative form of government and under the

provisions of the Ordinance of 1787, they elected a legislature, there being at that time five thousand male voters in the territory. Dr. Tiffin was sent as a representative from Chillicothe and upon the assembling of the first Territorial Legislature at Cincinnati he was unanimously elected Speaker of the House of Representatives, which position he held until Ohio became a State. He was a man of strong religious and moral convictions. In his early life he was an Episcopalian; in 1790 he associated himself with the Methodist Church and was consecrated by Francis Asbury, the missionary bishop, as a local preacher. Thus he brought into the new territory beyond the Ohio, with his professional skill, the still greater influence of the spiritual physician. In both capacities he firmly held the confidence of his fellow citizens throughout his life. Upon his entry into the church he manumitted his slaves, and his subsequent record shows how sincere were his convictions on this subject. As President of the first Constitutional Convention he won still greater honors and established his reputation as a man of unquestioned ability; indeed so pronounced and universal was this that he was elected Governor of the new State in January, 1803, without opposition. He was re-elected in 1805 without opposition, and in 1807 declined a third term which public sentiment was ready to confer upon him. During his second term he summarily arrested the participants in the Aaron Burr expedition, which resulted in the flight of Burr and the breaking up of the conspiracy. His vigorous and prompt measures on this occasion called forth a public letter of thanks from President Jefferson. In 1807 he was elected United States Senator from Ohio. While in the Senate he was the means of securing much valuable legislation for the new State. Appropriations for the Ohio River,

and for surveying the public lands were obtained by him, and much of the same kind of practical work which characterized him as Governor marked his Senatorial term. He resigned in March, 1809, owing to the death of his wife. It so affected him that he determined to retire from public life. Returning to his once happy home in Chillicothe, it was his intention to spend his remaining days in peace, but notwithstanding his desires his fellow-citizens elected him to the Legislature, where he was unanimously elected Speaker of the House. He was afterwards appointed Commissioner of the Land Office, being the first to hold that office, he systematized the claims and surveys of the public lands. He was in Washington in 1814 when it was burned by the British. President Madison, his Cabinet and the heads of the departments fled like cowards in the panic and all the public records of the American Republic were destroyed except the records of the Land Commissioner's office. Edward Tiffin stayed and saved the complete records of his department. So complete, compact and systematic were they maintained, and so cool and level-headed was their custodian that they were removed to a place of concealment in Loudon county, Virginia, ten miles out of Washington. All the other departments lost all their records; Edward Tiffin saved all of his. He closed his life as Surveyor General of the West, which position he held during the administrations of Madison, Monroe, John Quincy Adams and into Jackson's. He died here among the people who loved and honored him for more than a third of a century, after a remarkable life of usefulness and distinction.

This was the Edward Tiffin that confronted Arthur St. Clair in the great contest for statehood which resulted in the convention, the centenary of which we celebrate

today. And Tiffin had a foeman worthy of his steel. Arthur St. Clair, the first and only Governor of the Northwest Territory, was one of the most brilliant and distinguished military characters of the Revolutionary War. A contemporary writer calls him "the great St. Clair," and while in the gubernatorial chair of the Northwest, Judge Burnet marked him as "unquestionably a man of superior talents, of extensive information, and of great uprightness of purpose, as well as suavity of manners." Courtly, scholarly and honest, he was a fitting representative of the government in a new land. St. Clair, as his name indicates, was of French origin, although his ancestors had for centuries lived in Scotland, where he was born in 1734. He received his education at Edinburgh University, and was indentured as a student of medicine. He disliked this, and purchasing his time, he entered the English army in 1757. He was in the French and Indian War, and served under General Wolfe at Quebec, where his conduct was gallant and effective. He resigned from the English army in 1762 and settled down to civil life in Pennsylvania, where he filled many positions of trust, honor and importance. When the colonies rebelled against Great Britain, St. Clair threw his entire fortune and enthusiasm on the side of his country. In 1775 he was summoned to Philadelphia by a letter from President Hancock. His record from thence is a part of the history of the Republic. He was the assistant and confidant of Washington; he was a member of his military family and shared the hardships of Valley Forge, together with the victories of many hard fought battles. St. Clair, after the Revolution, retired to civil life. His fortune was gone in the whirligig of war. He started into the Revolution a rich man; when peace was declared the riches had flown. In 1786 he was

in Congress from Pennsylvania, and as a hero of two wars and a distinguished patriot he was elected its president in 1787. This Congress formulated and passed the Ordinance of 1787, under which St. Clair was nominated to the governorship of the Northwest Territory, which occurred October 5. Governor St. Clair accepted his new honor with misgivings. He says in his letters that it was forced upon him by his friends, who expected that there was more pecuniary compensation attached to it than events proved. It was supposed that the opportunities for land speculation would be so great that St. Clair would make money out of his advantages of position. But he was not so inclined, nor did he expect such a result. He was satisfied with and frankly stated, that he had the "ambition of becoming the father of a country, and laying the foundation for the happiness of millions then unborn." His unfortunate career as governor showed that he thwarted in every way his expressed ambitions. When Edward Tiffin entered upon the scene of action in the Northwest Territory Arthur St. Clair was an old man, worn with the campaigns of war and the conflicts of politics. There was little save its dignity to show that the classical face was that of the handsome Ensign St. Clair, who used to wield the accomplishments of the drawing room among the Bowdoin and Bayards of Boston thirty years before.

The entrance of the followers of Thomas Jefferson into the Northwest Territory was the commencement of a political war against Governor St. Clair that for persistency and bitterness, was fully equal to the famous controversy of Alexander Hamilton and Aaron Burr. Edward Tiffin had as his chief associates and lieutenants, Nathaniel Massie, Thomas Worthington, Jeremiah Morrow and Return J. Meigs, Jr., all men of the very highest

character and inspired by noble ambitions. They believed in the people; they were not only opposed to the Federalist principles of St. Clair, but resented the arbitrary and offensive methods of his administration. The Scotch governor knew of but two ways to control or govern men; they were to pull them or drive them. The Virginians would stand for neither method. So their opposition to St. Clair went not only to his principles, but to his methods. His exercise of the veto power invited the strongest opposition. He was an advocate of strong government. He did not believe in conferring on the citizen the fullest powers and responsibilities of American citizenship. He favored property qualification for electors. He got into a controversy with the Legislature over his own powers and prerogatives. He claimed and exercised the power of locating county seats and erecting new counties. This the Legislature denied, and attempted to enact laws in this subject which he promptly vetoed. In his contest with the Virginians he was supported by other able Federalists in the persons of General Putnam, Dr. Cutler and Judge Jacob Burnet.

It is not essential to our purpose to go into the details of the controversy that waged in the Territory from 1799 to 1802. There were acts of Congress, of the Territorial legislature, and of the Governor that furnished food for the bitterest contests. The Virginians were playing for the greatest stake in American politics—a state of the Union. The Federalists were making their last stand, struggling for power both in the East and West. It was almost pathetic to see the noble compatriot of Washington bending beneath the new storm that was arising. The reign of the people was abroad in the Northwest. Whatever virtue Washington's, Hamilton's and St. Clair's Federal views as to concentrated

power had in the then populous East, they were not respected by the yeoman of Ohio. The settler that fought his way into the heart of the Great West believed that he should have a full share in its government. And this was why the position of Tiffin was popular with the voters of his day. In the face of almost insuperable impediments, Tiffin won his fight for statehood.

The enabling act of Congress providing for the erection of the new state was approved April 30, 1802. It fixed the boundaries and provided for holding the constitutional convention on the first Monday of the following November. Edward Tiffin was very naturally elected to that body, and was as naturally selected as its president. His belief in the people is prevalent upon nearly every page of the organic law. The very first question or criticism that always arises in a consideration of this convention and of the constitution which it produced is that relative to the fact that that instrument was never submitted to the people for adoption or rejection. How did it develop that these men who made such a magnificent struggle for popular rights failed to submit their work to the people? A single reference to the enabling act will show the reason for the apparent dereliction. The fifth section provides that the convention shall first determine whether it is expedient to form a state constitution and government. This it did on the third day by a vote of 32 to 1. The only opposing vote being Ephraim Cutler of Washington county.

Such a conclusion being arrived at, the act specifically authorized the convention "to form a constitution and state government." It required no approval of the people. There was no legal machinery provided to secure such expression. It was the evident intent of the framers of the act referred to to commit the whole and

exclusive duty of forming the first constitution of Ohio, to the convention. The theory on which the convention was formed was that under the act of Congress it (the convention) was a strictly representative body, acting for and in the name of the sovereign people, and that it possessed by actual transfer all the inherent power of the sovereign, limited only by the constitution of the United States. In other words, it was a virtual assemblage of the people, of whom, by reason of their great numbers and remoteness from each other, an actual constitutional convention was impossible. They met, clothed with all the power the sovereign would have if gathered together. The convention might say what Louis XIV. said: "We are the State." The soundness of this position is strengthened when we search the records on the adoption of the constitutions of other states. The result shows that the following submitted their first constitution to the people for expression: California, Colorado, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, Oregon, Texas, West Virginia and Wisconsin, fifteen in number. The states which did not submit their first constitution to the people are as follows: Alabama, Arkansas, Delaware, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Virginia, Florida, Illinois, Indiana, Kentucky, Louisiana, Missouri, New Hampshire, Ohio, South Carolina, Tennessee and Vermont; in all twenty-one states whose conventions, with that of Ohio, regarded themselves as the sovereign source of power. So far as this feature of the first constitutional convention is concerned, it may be regarded as settled that it was neither extraordinary, revolutionary, nor without dignified and patriotic precedent.

The spirit of the contest which culminated in statehood seemed to run through the constitution. The ex-

ecutive branch of the state government was stripped of all authority. It left the name of "governor" to apply to an office that had more honor and dignity than power. The men who controlled the convention did not believe in dividing the legislative power, and therefore gave to the general assembly the sole power of making laws. They did not propose that the governor should interfere by veto power with the expressly elected legislative representatives of the people. And it can be truthfully said as a tribute to these views of Tiffin and the men of 1802, that after a hundred years there has not developed a sufficiently different public sentiment to change the active veto principle of their organic law. Next year the people of Ohio vote on an amendment to their constitution expressly granting the governor the right of veto. I do not believe there will be any change from the original idea introduced in the first constitution. The total absence of all property qualification for office is another indication of the antagonism of the convention to the views of St. Clair. They seemed determined to outlaw every element of aristocracy. This provision has also stood the test of two subsequent constitutional conventions, and stands firmer in our organic law than ever.

In apportioning the sovereign power of the people among their official agents, the convention gave by far the greater power to the Legislature. The right to make all the laws without any limitation but the constitution itself has been carried up to modern times. The money of the state was committed wholly to the legislature and that is where it is today.

The general provisions of the bill of rights and the specific powers of the state government have been practically those under which the people of Ohio have lived for one hundred years. The second constitution of Ohio adopted in 1851 by a vote of the people followed

throughout substantially the governmental lines laid down by the first constitutional conventions. The changes introduced were the result of the advanced progress of the state rather than a difference of constitutional ideas.

When Thomas Jefferson expressed his opinion to Jeremiah Morrow in 1803 on the constitution he approved it generally, except the provision relating to the erection of the judiciary, which he thought was too restricted for the future wants of the state. He said, "They had legislated too much." Whatever was done by the men of the first convention, their descendants followed them in 1851, for the same restrictions are apparent in the second constitution.

The satisfaction which the original constitution gave the people of the state is illustrated by their refusal to change it for fifty years. When Thomas Worthington was governor in 1817, he recommended the holding of a convention to form a new constitution. Afterwards, in 1818, Governor Ethan Allen Brown made a similar recommendation, and in 1819 the question of a second constitutional convention was submitted to the people of Ohio, and in a total vote of 36,302 was rejected by a majority of 22,328 votes.

The principal objection to the original constitution was the fact that the judiciary and state officers were appointed by a joint ballot of both houses of the General Assembly. Jefferson saw this would give trouble in the future. Its operation as afterwards developed, caused scandal, contention and disgrace, and hence the demand of Governors Worthington and Brown for an opportunity to change.

This conflict between the judiciary and the legislature commenced in 1808 and lasted for several years to the

great disturbance of the proper administration of law. It appears that in 1805 the legislature gave justices of the peace jurisdiction without a jury to the amount of fifty dollars. As the constitution of the United States guaranteed trial by jury to the suits in which over twenty dollars was involved the Supreme Court very properly in a case before it, decided the law void and unconstitutional, for the Constitution of Ohio provided that "the right of trial by jury shall be inviolate." The judicial decision was construed as an insult by the Legislature. As a result resolutions of impeachment were preferred in the Sixth General Assembly against Judges Huntington and Tod of the Supreme Court, and Judge Pease, presiding judge of the Third Circuit. Nothing was done at this session. While these articles of impeachment were pending Judge Huntington was elected governor, and of course resigned the judgeship. But the efforts at impeachment went on. Charges, however, were not made against Governor Huntington, but were preferred against Judges Tod and Pease.

Their answer to the charges of impeachment was the Constitutions of the United States and the State of Ohio. The result was an acquittal in both cases. Another incident growing out of the legislative power conferred by the first constitution was the "Sweeping Resolution," passed in 1819. This resolution passed in January and swept out of office every judge of the Supreme Court, and of the Court of Common Pleas, the secretary of state, the auditor of state, the treasurer of state, and also all the justices of the peace throughout the state. This resulted in interminable conflict and confusion, but it was the exercise of the power of the legislature.

If it were not for this single feature which caused these violent party strifes, there is every probability that we

would be living under the constitution of 1802 today. Indeed, a reference to the political literature of the time preceding the holding of the convention of 1851, will show that the election of the judiciary and other state offices was the most potent argument used in favoring a new constitution.

This convention that laid the political foundations of the state of Ohio so heavy and deep that substantially, they have never been changed, was formed of strong men. Out of the thirty-five all but two of them were from Southern and Southeastern Ohio. The Western Reserve played little part in this great work. She opposed both the territorial government and the state government. It is to the men who came from Virginia, Kentucky, Pennsylvania, and New York that the credit for the founding of Ohio must be given. They were the characters that dominated the first convention. It was their ideas of government that were injected into the first Constitution, and for the first fifty and the last fifty years of this state those ideas have prevailed. And the one man who dominated all, who influenced all, who executed all, was the minister, physician, parliamentarian, governor, senator and honest man—Edward Tiffin, of Chillicothe.